

MISSISSIPPI SUPREME COURT DECISIONS – MAY 5, 2022**SUPREME COURT - CIVIL CASES****JACKSON CNTY. BD. OF SUPERVISORS V. QUALITE SPORTS LIGHTING, LLC****CIVIL - STATE BOARDS AND AGENCIES**

ADMINISTRATIVE LAW - STATUTORY INTERPRETATION - STANDARD OF REVIEW - If the words of a statute are clear and unambiguous, the court applies the plain meaning of the statute and refrains from using principles of statutory construction

CIVIL PROCEDURE - CIRCUIT COURT - AUTHORITY - Circuit courts have the authority to ensure that the record it considers is authentic and complete

ADMINISTRATIVE LAW - APPELLATE REVIEW - REVIEW OF RECORD - When adjudicating an appeal from a decision by the governing authority of a municipality or county, circuit courts should follow a procedure informed by Miss. R. of App. P. 10, which allows that court to ensure that the record conveys a fair, accurate, and complete account of what transpired before the board of supervisors when analyzing board conclusions

FACTS

In May 2020, the Jackson County Board of Supervisors (“the Board”) started soliciting bids from prequalified vendors for an athletic field lighting system at the Vancleave soccer field. Musco Sports Lighting, LLC (“Musco”) and Qualite Sports Lighting, LLC (“Qualite”) were the only two companies that qualified through the prebid vetting process. In June 2020, bids were made through electronic reverse auction. Qualite bid one cent less than Musco on the LED system, but Qualite’s delivery time was forty days and Musco’s was twenty-one days. In July 2020, the Board found Musco to be the best bid and awarded Musco the LED lighting system project. Qualite filed a timely notice of appeal from the Board’s decision pursuant to Miss. Code Ann. § 11-51-75 including additional documents that the Board contended were not before it when it rendered its decision. The clerk of the Board filed the record of the proceedings in August 2020, but the minutes from the July 2020 meeting were not finalized at that time. The minutes were finalized in September 2020 when the clerk substituted the official minutes from the July meeting. Qualite then filed a Motion for Entry of Scheduling Order, including a request for a discovery period, and issued subpoenas duces tecum to the project engineer and the company that conducted the auction for the project. The Board filed a response to Qualite’s Motion and a Motion to Quash Subpoenas Duces Tecum. On appeal, the circuit court entered an order inter alia denying Qualite’s motion to the extent that it requested a discovery period. The circuit court also denied the Board’s motion to quash the subpoenas. Additionally, the circuit court’s order directed the clerk of the Board to supplement the record with the additional documentation designated by Qualite pursuant to Miss. Code Ann. § 11-51-75 and directed the parties to “confer on which documents should be made part of the record and any disagreement regarding the supplementation of the record shall be addressed and decided by this Court on proper Motion.” The Board filed a motion to stay the requirements of the order entered by the circuit court which the circuit court granted. In addition, the Board petitioned for interlocutory appeal.

ISSUES

Whether the circuit court (1) may permit the record to be expanded beyond what was originally before the Board of supervisors under Miss. Code Ann. § 11-51-75 and (2) has the authority to ensure that the record it considers is authentic and complete.

HOLDING

(1) Because, when examined in its totality, the plain language of Miss. Code Ann. § 11-51-75 could only support the conclusion that the appeal permitted by the Legislature is one in which new evidence cannot be considered, the Court reversed the circuit court's order to the extent it permitted the record to be expanded beyond what was originally before the Board. (2) Because Miss. Code § 11-51-75 does not provide a specific procedure for settling any disagreements about what constitutes the complete record on appeal, because the Supreme Court has the inherent authority to dictate procedure, and because the Court had already acknowledged that the notice of appeal under the 2018 amended Miss. Code Ann. § 11-51-75 was consistent with the procedure provided by the Miss. R. App. P., the Court concluded that a similar procedure was permitted under the revised statute. Therefore, the Supreme Court reversed and remanded the judgment of the Jackson County Circuit Court.

Reversed & Remanded - 2020-IA-01301-SCT (May 5, 2022)

Opinion by Justice Ishee

Hon. Robert P. Krebs (Jackson County Circuit Court)

James H. Colmer Jr. & Jackye C. Bertucci for Appellant - Russell Scott Manning for Appellee

Briefed by [Meagan Guyse](#)

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THOMPSON V. DESOTO CNTY. INTERVENTION CT.

CIVIL - OTHER

STATUTORY LANGUAGE - SILENCE - INTERPRETATION - When a statute is silent as to an issue, the court may engage in statutory interpretation

STATUTORY GOALS - INTERVENTION-COURT ACT - RESTORATIVE JUSTICE - The statutory goals set forth in Miss. Code Ann. § 9-23-3(2)(a)-(f) clearly indicates that the role of intervention courts is to deal with criminal behavior through restorative justice

INTERVENTION COURT - HYBRID COURT - FEES - An intervention court is considered a hybrid specialized or diversion court that handles drug crimes and the fees obtained during intervention court proceedings are criminal fees

INTERVENTION COURT - AUTHORITY - FEES - Under Miss. Code Ann. § 9-23-19(4), the court has the authority to assess reasonable and appropriate fees to be paid for participation in an alcohol or drug intervention program

FACTS

In 2006, the Seventeenth Circuit Court District established a drug court, now referred to as an intervention court. Offenders placed in the intervention court were required to pay at least \$100.00 to help with the costs and operation of the intervention court. At the request of the presiding judge, the circuit clerk of DeSoto County, Dale K. Thompson, agreed to collect all intervention court participation fees for the district. In May 2019, Circuit Judge James McClure III entered an order consistent with the 2006 order and ruled that the offenders' \$100 participation fee paid to the intervention court was an alternative sentence imposed by Miss. Code Ann. § 9-23-3 through § 9-23-51. In July 2019, Thompson filed a petition for the court to set aside or rescind the order directing intervention court fees to be paid at the circuit clerk's office. Thompson argued that the office of the circuit clerk is responsible for collection of criminal fines and fees under Miss. Code Ann. § 9-1-43(5), but that the participation fee was neither a criminal fine nor a fee. She also asserted that the circuit clerk is not currently compensated in any way for processing the intervention court participation fees; because it is not a statutory duty; she argues that her salary does not cover this work. Since there is no statutory authority to do so, Thompson claimed that the circuit clerk may not retain any processing fees or administrative-cost fees as is done for other duties of the circuit clerk, such as processing civil complaints. A hearing was held on the petition. Thompson testified that, since 2007, the DeSoto County Circuit Clerk's Office has collected and retained intervention court fees. The number of intervention court participants has steadily increased, with an estimated three hundred participants from DeSoto County. Thompson claimed that there has been hardship on her office and it has increased with the number of participants. Thompson was concerned that the receipt of intervention

court funds takes away from other clerk duties, such as, receiving money in circuit court cases, attending trials, and answering phones. Thompson also testified that her office incurs other expenses necessary to account for intervention court funds, including increased costs for accounting, bookkeeping, surety bonding, and office supplies. Judge McClure denied the petition and held that the intervention court participation costs are considered criminal fines or fees under Miss. Code Ann. § 9-1-43(5)(b), and that it is the circuit clerk's duty to collect any portion of any fees required by law or court order in criminal cases. Judge McClure also ruled that Thompson's issue with collecting criminal case fines, fees, and assessments in intervention court cases and not being compensated should be addressed by the State Legislature. Thompson appealed.

ISSUES

Whether (1) participation fees under Miss. Code Ann. § 9-23-19 are the same as criminal fees under Miss. Code Ann. § 9-1-43(5); (2) the circuit court had the authority to order circuit clerks to collect participant fees and fines associated with the intervention court; and (3) the circuit court had the authority to order the circuit clerk to collect intervention court fees without compensation.

HOLDING

(1) Because the Intervention-Court Act, codified in Miss. Code Ann. § 9-23-1 through § 9-23-51 was created to reduce the incidence of crimes committed as a result of alcohol and drug use, and the statutory language makes plain that the intervention court is criminal court, the fees obtained during intervention court proceedings are criminal fines and fees. (2) Because Miss. Code Ann. § 9-1-43(5) declares that once a court orders a fine or fee in a criminal case, it falls to the circuit clerk's office to collect that fine or fee, there was no error in the circuit court's order that denied the petition and required the circuit clerk to continue to collect and account for the intervention court participation fees as criminal fines and fees. (3) Because Thompson's petition did not seek an award for compensation, either retrospectively or prospectively, the circuit court could not be held in error for an issue not presented for a ruling. Therefore, the Supreme Court affirmed the judgment of the DeSoto County Circuit Court.

Affirmed - 2020-CA-00956-SCT (May 5, 2022)

En Banc Opinion by Justice Griffis

Hon. James McClure III (DeSoto County Circuit Court)

Paul Scott & Samuel Barber for Appellant - Barbara W. Byrd & Drew D. Guyton (Att'y Gen. Office) for Appellee

Briefed by [Chatham M. DeProspero](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MAY 3, 2022

COURT OF APPEALS - CIVIL CASES

DUNN V. HART

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS & ESTATES - PRESUMPTION OF UNDUE INFLUENCE - CONFIDENTIAL RELATIONSHIP

- A will contestant raises a presumption of undue influence by showing the existence of a confidential relationship between the testator and beneficiary of the will and an abuse of that relationship relating to the execution of the will

WILLS & ESTATES - PRESUMPTION OF UNDUE INFLUENCE - REBUTTAL - A presumption of undue influence may be rebutted by the proponent of the will showing, by clear and convincing evidence, good faith on the part of the beneficiary, the testatrix's full knowledge of the consequences of her actions, and the testatrix received the advice of a competent person disconnected from the beneficiary and devoted wholly to her

FACTS

In April 2017, Dr. Anita Virginia Rish Hitt ("Ginger") died testate. She was survived by three natural children, Sheron, Charlotte, and Yvonne, and two stepchildren, Drew and Ann. Upon her husband's death in 2011, Ginger moved in

with Sheron in Tennessee. Due to failing eyesight, she became reliant upon Sheron to drive her to appointments. In 2014, Ginger had major heart surgery after which she experienced post-surgical delirium and confusion. After recuperating, she was discharged into Sheron's care. One month later, a banking agent contacted Charlotte about suspicious activity on Ginger's bank account which listed both Charlotte and Sheron as co-owners. Charlotte became concerned about charges across the country during Ginger's hospital stay and while Ginger had made a trip to visit Charlotte in Ohio. After unsuccessful attempts at discussing the issue with Sheron and with the advice of a bank representative, Charlotte removed the majority of funds from the account. In April 2014, Charlotte and Yvonne filed for a conservatorship with the chancery court. Ginger retained Tim Hudson, who had previously represented Sheron, to defend the conservatorship action. In August 2014, the chancery court had Ginger examined by a neuropsychologist who found her to be demented and susceptible to deception by others and concluded that she would have difficulty keeping track of her finances. In 2015, the chancery court entered an agreed order for partial conservatorship, leaving Ginger with complete discretion over the bank account in question. A week later, Ginger executed a will leaving the entire estate to Sheron. Ginger passed away in April 2017 at which time Charlotte filed a petition to probate Ginger's previous will executed in 2006. Sheron filed a petition in May 2017 to probate Ginger's 2015 will. Charlotte, Yvonne, Ann, and Drew contested Sheron's petition arguing that Ginger did not have the mental capacity to execute the 2015 will and that it was procured by undue influence, fraud, and misrepresentations by Sheron. A bench trial was held in February 2020, at which time the parties stipulated that the 2015 will was validly executed and that a confidential relationship existed between Sheron and Ginger. Martha, Ginger's cousin who visited her once a week, testified that Sheron instigated the execution of the 2015 will. The chancery court concluded that Sheron did not overcome the presumption of undue influence and dismissed the petition to probate the 2015 will. Sheron filed a motion for new trial or, in the alternative, to alter or amend the judgment, which the chancery court denied. Sheron appealed.

ISSUES

Whether the chancery court erred in finding (1) that a presumption of undue influence arose and (2) that Sheron failed to rebut that presumption.

HOLDING

(1) Because the parties stipulated to there being a confidential relationship, and because the evidence of Ginger's mental evaluation, the fact that she was appointed a conservator, the suspicious circumstances regarding her isolation, her total dependence on Sheron, Sheron's constant presence, and Martha's testimony about Sheron instigating the execution of the new will constituted suspicious circumstances, the chancery court had the requisite substantial evidence to support a finding that a presumption of undue influence was raised. (2) Because the chancery court was not convinced that Sheron had nothing to do with the preparation of the 2015 will, because the chancery court believed Ginger's ability to deliberate her actions and their consequences was heavily influenced by Sheron's constant presence, and because Hudson had previously represented Sheron, the chancery court did not err in finding that Sheron failed to rebut the presumption of undue influence. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Chancery Court.

DISSENT

Judge McCarty argued that the chancery court's finding of credibility regarding the testimony of the lawyer who prepared the 2015 will, Ginger's treating physician, and the videotape of Ginger herself, established that the will was the product of undue influence. Therefore, the chancery court, which arrived at the opposite conclusion despite finding the evidence credible, did not have sufficient evidence to support their conclusions.

Affirmed - 2020-CA-01229-COA (May 3, 2022)

En Banc Opinion by Chief Judge Barnes - Dissent by Judge McCarty

Hon. Rodney Purvis Faver (Lowndes County Chancery Court)

William Paul Starks II for Appellant - Christopher D. Hemphill for Appellees

Briefed by [Channing Curtis](#)

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SIMMONS V. JACKSON CNTY.

CIVIL - WRONGFUL DEATH

MISS. TORT CLAIMS ACT - GOVERNMENTAL ENTITY - FAILURE TO WARN - Government entities bear no liability where they fail to warn of open and obvious conditions; however, government entities may be liable for the negligent maintenance or repair that created the open and obvious condition unless the plaintiff is one hundred percent negligent themselves

TORTS - DUTY - ENHANCED CARE - When motorists encounter highway construction that they are sufficiently warned about, they should exercise enhanced care, meaning vigilant caution

FACTS

Jackson County (“the County”) owns and maintains Old River Road, and in 2016, the County contracted a company to perform an asphalt overlay on a section of this road. For two weeks after the completion of the overlay, the road had a shoulder drop-off of at least twelve inches while the asphalt was cooling and before the work could be completed. During these two weeks, the road had no centerline to delineate its travel lanes; however, the County placed signage to put motorists on notice of when construction would resume. Melvin Simmons was driving one night when his car drove off this road and flipped, ejecting him from the vehicle. There was one eyewitness who testified that his vehicle passed Simmons’s vehicle just before it ran off the road and that he watched the accident occur in his rearview mirror. The witness further stated that Simmons seemed to be driving “fast” considering the construction and failed to slow down as the two cars passed each other. Simmons died from the injuries he sustained from the accident. In 2017, Simmons’s wife, Retha Simmons, brought a wrongful death action against the County. The trial court found that although the County breached a ministerial duty by failing to mark the road with temporary center lines during these two weeks and created the dangerous condition of the steep shoulder drop-off, neither of these things was a proximate cause of the accident. Instead, the trial court found that because the condition of the road was “open and obvious to a motorist exercising due care” and Simmons knew of the condition, Simmons’s negligence in failing to use due care was the sole proximate cause of the accident. Thus, the trial court ruled for the County. Simmons appealed.

ISSUE

Whether the trial court erred in finding that Simmons’s accident resulted solely due to his negligence.

HOLDING

Because there was sufficient evidentiary support that Simmons’s negligence in failing to exercise vigilant caution while driving through the road work constituted the sole proximate cause of the accident, the trial court did not err in failing to find that the County’s negligence contributed to Simmons’s death. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

DISSENT

Judge Westbrook argued that because the accident would not have happened but for the steep drop-off and was foreseeable to the County, proximate cause was established. She argued that under the open and obvious standard, the duty to keep the premises in a reasonably safe condition was breached by the County. Therefore, she argued that Simmons could not be one hundred percent negligent, and she would remand to assign partial fault to the County.

Affirmed - 2020-CA-01014-COA (May 3, 2022)

Opinion by Judge Smith - Dissent by Judge Westbrook

Hon. Dale Harkey (Jackson County Circuit Court)

L. Clark Hicks Jr. for Appellant - Daniel Judson Griffith & James H. Colmer Jr. for Appellees

Briefed by [Carter Babaz](#)

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SMITH V. PUB. EMPS. RET. SYS. OF MISS.

CIVIL - STATE BOARDS & AGENCIES

AGENCIES - DISABILITY BENEFITS - BURDEN OF PROOF - Under Miss. Code Ann. § 25-11-113(1)(a), any member seeking disability benefits must prove to the medical board that they are mentally or physically incapacitated for the further performance of a duty, that the incapacity is likely to be permanent, and that the member should be retired

AGENCIES - DISABILITY - DUTY-RELATED BENEFITS - Along with the requirements under Miss. Code Ann. § 25-11-113(1)(a), an individual who applies specifically for duty-related disability benefits must prove that they were disabled as a direct result of an accident or traumatic event resulting in a physical injury occurring in the line of performance of a duty

FACTS

John Smith began working as a correctional officer at Washington County Regional Correctional Facility in Greenville (“correctional facility”) in February 2016. In March 2016, Smith was injured while attempting to restrain an unruly inmate at the correctional facility. An MRI revealed that Smith had a complete patellar tendon tear in his right knee. In April 2016, Smith underwent surgery performed by Dr. Jason Craft to repair the right knee and began physical therapy. Months after his surgery, Smith returned to Dr. Craft with lower extremity pain; Dr. Craft ordered a second MRI of Smith’s right knee, which revealed that the tendon had torn again. In addition, Dr. Timothy Beachman diagnosed Smith with complex-regional-pain syndrome and right lower-extremity chronic pain syndrome; Dr. Beachmen restricted Smith from standing for long periods of time, walking long distances, and lifting more than 30 pounds for six-to-twelve months, at which point he thought Smith would be fully recovered. Smith’s employer offered him light-duty employment during this time, which Smith refused. Almost a year after his work injury occurred, Smith filed for duty-related disability benefits through the Public Employees’ Retirement System of Mississippi (“PERS”). Dr. David Collipp then performed an independent medical examination (“IME”) of Smith. Dr. Collipp determined that Smith had no specific restrictions for his right knee because it was functionally stable and he did not have Complex Regional Pain Syndrome I or II. Dr. Collipp further opined that Smith’s limitations were due to his general habitus of morbid obesity. Smith then underwent a functional capacity examination (“FCE”), which found he had good range of motion and effective use of his right knee. The examiner suggested that Smith see a cardiologist, noting that his limitations may be attributable to other health concerns. As a result of his medical records and testimony heard at the hearing, the PERS Medical Board denied Smith duty-related disability benefits. Smith filed a notice of appeal to the Disability Appeals Committee (“The Committee”). The Committee recommended that the PERS Board of Trustees deny Smith’s claim for duty-related disability benefits, finding that there was insufficient objective medical evidence that Smith was unable to perform his usual duties as a correctional officer. The PERS Board of Trustees denied Smith’s claim. Smith subsequently filed his appeal of the PERS Board of Trustees’ decision to the Circuit Court of Hinds County. The Circuit Court affirmed the denial of disability benefits. Smith appealed.

ISSUE

Whether the PERS Board of Trustees’ decision to deny Smith duty-related disability benefits was clearly erroneous, contrary to law, and not supported by substantial evidence.

HOLDING

Because multiple examinations by physicians showed that Smith was not permanently disabled from his work-related knee injury, and because Smith presented no evidence contrary to these findings, there was sufficient evidence for the PERS Board of Trustees to deny Smith duty-related disability benefits. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2021-SA-00051-COA (May 3, 2022)

Opinion by Judge McCarty

Hon. Isadore W. Patrick Jr. (Hinds Country Circuit Court, First Judicial Dist.)

Yancy B. Burns for Appellant - Amelia Bartlett Gamble for Appellee

Briefed by [Macy Walters](#)

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COURT OF APPEALS - CRIMINAL CASES

ADAMS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - REVIEW - PLAIN-ERROR DOCTRINE - Plain-error review is properly utilized for correcting obvious instances of injustice or misapplied law; for the plain-error doctrine to apply, there must have been an error that resulted in a manifest miscarriage of justice or seriously affects the fairness, integrity of public reputation of judicial proceedings

CRIMINAL PROCEDURE - WAIVER - OBJECTIONS - An objection on one or more specific grounds constitutes a waiver of all other grounds

APPEALS - INDICTMENT AMENDMENTS - RECORD - Under Miss. Code Ann. § 99-17-15, the State is required to make sure that an order amending an indictment appears on the record, and the defense is required to object to the absence of such order if it wishes to preserve the point for appeal

FACTS

On August 29, 2016, Justin Wilson and his sister Amanda witnessed and reported a robbery at the Molly Barr Trails Apartments in Oxford. They reported seeing two or more black males wearing bandanas over their faces while standing over a car in the parking lot and then fleeing in a silver Mustang. A Lieutenant from Oxford Police Department was in the area and saw a car matching the description and initiated a traffic stop. Brandon McAllister was driving the car, Jamaldae Adams was in the passenger seat and Laterrance Lindsey was in the backseat. The officers recovered a revolver, several cell phones, and black and white bandanas from the car. Adams was wearing a gold watch and had a bag of marijuana inside his pants. Alisha Smith testified that during the day on August 29, 2016, she and some friends spent a couple of hours with Adams. That evening, Adams called Smith from a gas station and asked her to give him a ride to the Molly Barr Trail Apartments to meet some friends. Smith and her friend picked up Adams and drove him to the apartments. Upon arrival, Adams directed Smith to park in a specific area of the parking lot. Adams then called one of his friends to tell him where they were parked. About two minutes later, two men ran up to the car wearing bandanas, holding a gun, and yelling at them to give them everything they had. Smith gave the men her phone, the passenger gave them his phone and a “bag of something” and Adams gave them his gold watch. After handing over his watch, Adams pushed to exit the car and ran away in the same direction as the two robbers. Smith left immediately. The State called Lindsey as a witness where he acknowledged what he was charged with, that he had pled guilty, and gave his testimony. During his testimony, Lindsey admitted to driving to Oxford from Tupelo with Adams and McAllister and ending up in the car with them after the robbery. A detective interviewed Adams on the night of the robbery and again ten days later, and the recordings were played at trial. Adams gave a different story in each interview. In the second interview, Adams stated that his first story was incorrect and that McAllister threatened to hurt his mother if he did not participate in the robbery. In other words, Adams claimed he participated in the robbery under duress. The detective also recorded two interviews with Lindsey on the night of the robbery and three days later. Parts of the second interview were played during the State’s direct examination of the detective. On cross-examination, Adams’s lawyer played parts of both interviews. After the detective’s testimony concluded, the State moved to admit the disc containing the full recording of both interviews, to which Adams’s attorney had no objections. Adams, McAllister, and Lindsey were indicted for armed robbery, and Adams was tried separately. At the close of the State’s case, the trial judge denied Adams’s motion for directed verdict. Adams did not testify or call any witnesses. Adams was convicted of armed robbery following a jury trial. Adams filed a motion for a new trial or judgment notwithstanding the verdict, which was denied by operation of law. Adams appealed.

ISSUES

Whether (1) the jury’s verdict was against the overwhelming weight of evidence; (2) the trial court committed plain error by allowing Lindsey to testify that he had pled guilty; (3) the trial court erred by allowing Lindsey’s recorded interview to be played at trial; (4) any errors or omissions in the indictment required reversal; and (5) cumulative error occurred.

HOLDING

(1) Because there was sufficient evidence for the jury to find that Adams set up and participated in the robbery willingly, and because there was no overwhelming evidence to the contrary, the jury’s verdict was not against the overwhelming weight of the evidence. (2) Because Adams failed to object to the testimony at trial, and because there was no legal rule which required the trial court to act sua sponte to exclude Lindsey’s testimony in the absence of an objection by Adams, the trial court did not commit plain error by allowing Lindsey to testify that he had pled guilty. (3) Because the trial court was not required to exclude the interviews in the absence of a valid objection to them, and because Adams’s trial counsel used parts of the interviews, thus not prejudicing Adams, the trial court did not err by allowing the recorded interview to be played. (4) Because the original indictment was sufficient, reversal was not required. (5) Because the original indictment was legally sufficient and there was no material variance between it and the proof at trial, no cumulative error occurred. Therefore, the Court of Appeals affirmed the judgment of the Lafayette County Circuit Court.

Affirmed - 2020-KA-01383-COA (May 3, 2022)

Opinion by Presiding Judge Wilson

Hon. Grady Franklin Tollison III (Lafayette County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Candice Leigh Rucker (Att’y Gen. Office) for Appellee

Briefed by [Anna Tucker](#)

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BRIGGS V. STATE

CRIMINAL - MISDEMEANOR

CRIMINAL PROCEDURE - NEW TRIAL - WEIGHT AND SUFFICIENCY OF EVIDENCE - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice; this high standard is necessary because any factual disputes are properly resolved by the jury, not by an appellate court

CRIMINAL LAW - MISDEMEANOR - DRIVING UNDER THE INFLUENCE - Pursuant to Miss. Code Ann. § 63-11-30(1)(c), it is unlawful for a person to drive or operate a vehicle if the person is under the influence of any drug or controlled substance

FACTS

In 2018, Amos Briggs encountered a driver’s license checkpoint while driving his vehicle in Franklin County. At trial, Trooper Marcus Fisher testified that he could smell a strong marijuana odor emanating from the vehicle occupied by Briggs. Additionally, Trooper Fisher testified that Briggs’s breath smelled of marijuana, his eyes were watery and bloodshot, and when asked to walk towards the rear of the vehicle, Briggs struggled to maintain his balance. Trooper Fisher asked Briggs whether Briggs had smoked marijuana, and Briggs admitted to smoking one blunt an hour prior. Trooper Fisher testified that he found a jar of marijuana under the driver’s seat and a bag of marijuana in Briggs’s pants pocket. Briggs appealed to the circuit court. At the bench trial, Trooper Fisher testified that he did not conduct a field blood test, a sobriety test, nor conducted a urinalysis. Further, he did not have test results from the Mississippi Crime Laboratory that confirmed that the substance retrieved from the vehicle and Briggs’s pocket was marijuana. However, Trooper Fisher testified that because of his twenty years of experience, he knew “for a fact” it was marijuana retrieved from the vehicle and Briggs’s person. Trooper Fisher further testified he could not observe Briggs’s driving for an extensive time and that Briggs was driving slowly because of the checkpoint. Briggs testified that the pants he wore during the checkpoint belonged to his brother, that he had no knowledge of the marijuana in the vehicle, and the vehicle did not belong to him. Briggs also denied that he told Trooper Fisher he smoked marijuana the day of the checkpoint.

After reviewing the evidence and testimony, the circuit court found Briggs guilty of first-offense driving under the influence of marijuana and not guilty of simple possession of marijuana. Briggs filed a motion for a new trial, alleging that the verdict and decision to deny his motion was against the overwhelming weight of evidence and that the State failed to meet its burden of proof. The circuit court denied Briggs's motion, finding that the State "clearly proved beyond a reasonable doubt" that Briggs was guilty of driving under the influence of marijuana. Briggs appealed.

ISSUE

Whether the circuit court erred in denying Briggs's motion for a new trial.

HOLDING

Because there was no element under Miss. Code Ann. § 63-11-30(1)(c) that required Trooper Fisher to perceive that Briggs's driving was impaired, and because a reasonable jury could have inferred from Trooper Fisher's testimony that Briggs's poor balance and bloodshot eyes indicated his impaired driving ability, the circuit court did not err in denying Briggs's motion. Therefore, the Court of Appeals affirmed the judgment of the Franklin County Circuit Court.

Affirmed - 2020-KM-01350-COA (May 3, 2022)

Opinion by Presiding Judge Carlton

Hon. Debra W. Blackwell (Franklin County Circuit Court)

Nelson Shane Estess for Appellant - Mary Kathryn Williamson (Att'y Gen. Office) for Appellee

Briefed by [Le'Ronda Gates](#)

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DYER V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPEALS - ARGUABLE ISSUES - Under *Lindsey*, when an appellate counsel representing an indigent criminal defendant does not believe their client's case presents any arguable issues on appeal counsel must: file a brief in accord with Miss. R. App. Pro 28(a), send a copy of the appellate brief to both defendant and client informing the client that counsel could find no arguable issues in the record as well their right to file a pro se brief, and if, upon determination by the court, based on its review of the record and any pro se brief, there are arguable issues present, submit a supplemental briefing on that issue regardless of the probability of the defendant's success on appeal

CRIMINAL PROCEDURE - APPEALS - LINDSEY BRIEFS - Under *Lindsey*, appellate counsel's brief must confirm that in counsel's finding of no arguable issues he or she has thoroughly scoured the record and has specifically examined: the reason for arrest and the circumstance surrounding arrest, any possible violations of the client's right to counsel, the entire trial transcript, all rulings of the trial court, possible prosecutorial misconduct, all jury instructions, all exhibits, and the possible misapplication of law in sentencing

FACTS

James Dyer, the longtime boyfriend of Rahsheeda, was spending the night at the home of Rasheeda and her three daughters. Dyer was told to sleep on the couch. After the entire family went to sleep, Dyer snuck into Rahsheeda's fourteen-year-old daughter, Kelly's bedroom. Despite Kelly explicitly telling Dyer no, he performed oral sex on her and attempted vaginal sex, but Kelly pushed him off and ran into the room with her mom. Kelly was too scared to tell her mother, so she texted her aunt and told her that Dyer has just raped her. The aunt texted her back and encouraged Kelly to tell Rahsheeda, then called Rahsheeda herself and told her what Kelly said. Rahsheeda then confronted Dyer, but he denied that the incident occurred. Rahsheeda called the police, but Dyer left before they arrived. The daughter was taken to the hospital where staff performed a forensic sexual assault exam. Dyer was later arrested and indicted on one count of sexual battery. Rahsheeda, Kelly, Kelly's aunt, and the responding officers testified at trial. Dyer testified in his own defense and denied the allegations that he had behaved inappropriately with Kelly. The jury found Dyer guilty and sentenced him to twenty years, but the court chose to suspend ten years of the sentence and ordered Dyer to be placed

on ten years of post-release supervision. After searching through the record for arguable issues, Dyer’s appellate counsel filed a *Lindsey* brief. Counsel mailed a copy of the trial record and a copy of the brief to Dyer. He informed Dyer he found no arguable issues and advised him he has a right to file a pro se brief, but Dyer did not do so.

ISSUE

Whether there were any arguable issues on appeal warranting appellate counsel to file a supplemental brief.

HOLDING

Because appellate counsel filed a brief and followed all other relevant procedures in accordance with *Lindsey*, and because Dyer did not file a pro se brief, the Court found no arguable issues warranting the filing of a supplemental brief. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Circuit Court.

Affirmed - 2021-KA-00016-COA (May 3, 2022)

Opinion by Judge McCarty

Hon. Albert B. Smith III (Bolivar County Circuit Court, Second Judicial Dist.)

Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee

Briefed by [Samuel Taylor Rayburn](#)

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SMART V. STATE

CRIMINAL - FELONY

EVIDENCE - AUTHENTICATION - ONLINE COMMUNICATIONS - Under Miss. R. Evid. 901, a party need only make a prima facie showing of authenticity, and once such a showing is made, the jury will ultimately determine the authenticity of the evidence, not the court

EVIDENCE - AUTHENTICATION - ONLINE COMMUNICATIONS - A party may make a prima facie showing of authenticity of online messages by showing that the communication contains information only the purported sender could be expected to show, showing the purported sender responded to an exchange in such a way as to indicate circumstantially he was the author of the communication and showing other circumstances peculiar to the case that tend to show authorship of the communication

EVIDENCE - OBJECTIONS - PROCEDURAL BAR - A defendant is procedurally barred from asserting an issue on appeal if he fails to object to the statements during trial

FACTS

A circuit court jury found Robert Smart guilty of exploitation of a child, C.R., in violation of Miss. Code Ann. § 97-5-33(6). The charges against Smart arose from online communications he had with a former student, C.R. At trial, C.R. testified that after a sexual encounter between the two, Smart gave him fifty dollars to keep quiet and suggested to C.R. that they stay in communication via the online messaging app, Kik. Further, C.R. testified Smart told him his Kik username was “smartgye.” Subsequently, Smart began sending C.R. Kik messages with crude language and imagery, including comments referencing their previous sexual encounter. C.R. testified that he “didn’t know how to tell [his] mom about the situation,” so he “left his phone open on the messages” and she “scrolled through it and told [him] to tell Mr. Smart she was calling the police on him.” After he relayed the message, Smart called him four times, and those calls were shown in C.R.’s phone records. C.R.’s mother screenshotted the messages, sent them to her phone, and told him to uninstall the Kik application and block Smart’s number on his phone. Once he did that, the application permanently deleted all the messages between him and Smart, and when he blocked Smart’s number, his phone deleted all the text messages between them. The State’s computer forensics expert, however, testified that when he examined C.R.’s phone, he found the username “smartgye” as a username stored in a database file that is used by the Kik application. He also testified that an examination of C.R.’s mother’s phone showed the sent screenshots messages within five to ten minutes of all four calls made from Smart’s phone to C.R. Moreover, the first call to Smart made to C.R.’s phone that day was two minutes after C.R. sent the message about his mother calling the police. Lastly, an employee at

the school C.R. attended testified that on the same day as the calls were made, Smart showed up at the school asking about C.R.'s whereabouts. In the State's closing arguments, it stated the Kik messages were from Smart and that those messages correlated with a printout of C.R.'s cellular provider account. Smart nor his counsel objected on these grounds. In light of the evidence the State presented, Smart was convicted. Smart appealed his conviction and sentencing.

ISSUES

Whether (1) the trial court erred in ruling that the Kik messages were properly authenticated and admitting them into evidence; (2) the State committed prosecutorial misconduct by asserting that the messages were sent from Smart and that the messages correlated with a printout of C.R.'s cellular provider account; and (3) individual errors in the trial amounted to cumulative reversible error under the "cumulative error" doctrine.

HOLDING

(1) Because the Kik messages contained information that only Smart could have been expected to know, because Smart responded to the messages in such a way that indicated circumstantially that he was the author of the communication, and because other circumstances peculiar to the case showed he was the author of the communications, the trial court did not err in ruling that the Kik messages were properly authenticated and admitting them into evidence. (2) Because Smart did not object to the closing arguments at trial, the issue was procedurally barred on appeal. (3) Because there were no individual errors in Smart's trial, the cumulative error doctrine did not apply in his case. Therefore, the Court of Appeals affirmed the decision of the Bolivar Country Circuit Court.

Affirmed - 2020-KA-00835-COA (May 3, 2022)

Opinion by Presiding Judge Carlton

Hon. Albert B. Smith III (Bolivar County Circuit Court, Second Judicial Dist.)

Daniel Ellis Morris for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee

Briefed by [Garner Vance](#)

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WOFFORD V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - ACCOMPLICE LIABILITY - ACCESSORY BEFORE THE FACT - Miss. Code Ann. § 97-1-3 states that every person who shall be an accessory to any felony, before the fact, shall be deemed and considered a principal, and shall be indicted and punished as such

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - ACCOMPLICE LIABILITY - Miss. Code Ann. § 97-1-3 provides sufficient notice to felony defendants that although they may be indicted as a principal, a jury instruction based on accomplice liability is proper, provided that the evidence presented supports the instruction given

CRIMINAL LAW - ACCOMPLICE LIABILITY - ACCESSORY BEFORE THE FACT - An accessory before the fact is one who procures, counsels, or commands another to commit a felony for him, but is not himself present, actually or constructively, when the felony is committed

EVIDENCE - CROSS-EXAMINATION - RELEVANCE - Miss. R. Evid. defines evidence as relevant if (a) it has any tendency to make a fact more or less probable than it would be without the evidence and (b) the fact is of consequence in determining the case

CRIMINAL LAW - BAIL - DENIAL - Bail is a fundamental, constitutionally protected right, but that right is not automatic, and the decision to grant or deny bail rests in the sound discretion of the judicial officer

FACTS

In August of 2015, Buddy Dupuy's home was robbed of guns, money, and other valuables. Dupuy's home was again burglarized in September of 2018. A window had been knocked out and a safe from the home was found in the back of a pick-up truck. Deputies apprehended two individuals, Michael Weaver and Paula Womack. Womack confessed to taking part in the 2018 burglary. Weaver confessed to taking part in both the 2015 and 2018 burglaries. Weaver identified

Ray McNally and Jamie Dodson as his accomplices and informed the deputies that he had been recruited by William Wofford for the burglaries. Wofford was interviewed and admitted to knowing Weaver. McNally and Dodson also confessed to taking part in the 2015 burglary. Wofford was then indicted for both the 2015 and 2018 burglary. At trial, it was revealed that Wofford had worked for Dupuy in the past and that some of the stolen guns from the 2015 burglary were recovered from Wofford. Weaver testified that Wofford asked him if he could get into Dupuy's safes, explained the layout of the home, and then told him on what day to commit the burglary. Weaver further testified that after he, McNally, and Dodson committed the 2015 burglary, he gave ten percent of the stolen money and goods to Wofford. Weaver testified about the 2018 burglary as well, explaining that Wofford told him when no one would be on the property and what would be needed to complete the burglary. At the time of the burglary, Weaver also testified that he exchanged phone calls with Wofford, which were confirmed by phone records. Wofford testified in his defense, claiming that he did not know anything about either burglary, that he did not receive a share of the 2015 burglary, and that he never spoke of Dupuy's safe or the location of his guns. Wofford testified that the calls exchanged between him and Weaver were regarding the sale or lease of a truck. Wofford was found guilty of two counts of burglary of a dwelling. Wofford appealed.

ISSUES

Whether the circuit court erred by (1) denying Wofford's motions for a directed verdict and for judgment notwithstanding the verdict and request for a preemptory instruction; (2) giving jury instruction S-3 as an accomplice-liability instruction; (3) granting the State's motion in limine prohibiting testimony regarding the amount of money and items taken from Dupuy's safe; and (4) denying Wofford's request for bond pending appeal.

HOLDING

(1) Because the evidence was sufficient to show Wofford aided and abetted his co-defendants in the burglaries, the circuit court properly denied Wofford's motions and request. (2) Because a circuit court may give an accomplice-culpability instruction without constructively amending an indictment, because the law holds an accomplice to a felony before the fact is liable as a principal, and because there was sufficient evidence to present an accomplice-liability instruction to the jury, the circuit court did not err by giving jury instruction S-3. (3) Because the exact amount of money taken from Dupuy's safe held no relevance to Wofford's charges, the circuit court did not err by granting the motion in limine. (4) Because Wofford represented a special danger to Dupuy, the circuit court did not err in denying Wofford's request for bond. Therefore, the Court of Appeals affirmed the judgment of the Amite County Circuit Court.

Affirmed - 2020-KA-01341-COA

Opinion by Judge Greenlee

Hon. Debra W. Blackwell (Amite County Circuit Court)

Wayne Dowdy for Appellant - Allison Kay Hartman (Att'y Gen. Office) for Appellee

Briefed by [Mariel Soehner](#)

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